

STATE OF MICHIGAN
COURT OF APPEALS

HTC GLOBAL SERVICES, INC.,

Plaintiff-Appellant,

v

SRINI VASAN, a/k/a SIRINI VASAN,

Defendant-Appellee.

UNPUBLISHED

October 28, 2003

No. 240644

Oakland Circuit Court

LC No. 01-028674-CK

Before: Bandstra, P.J., and Hoekstra and Borrello, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendant Vasan's motion to set aside a default judgment against him. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

While the law favors the determination of claims on their merits, the policy of this state is generally against setting aside properly entered defaults. *Alken-Ziegler, Inc v Waterbury Headers Corp*, 461 Mich 219, 229; 600 NW2d 638 (1999). A motion to set aside a default or default judgment shall be granted if the court did not obtain jurisdiction over the defendant. MCR 2.603(D)(1). Otherwise, the motion shall be granted only if good cause is shown and an affidavit of facts showing a meritorious defense is filed. MCR 2.603(D)(1). Good cause sufficient to set aside an entry of default includes such matters as (1) a substantial defect or irregularity in proceedings upon which the default was based, (2) a reasonable excuse for failing to comply with the requirements that created the default, or (3) some other reason showing that manifest injustice would result from permitting the default to stand. *Huggins v MIC Gen Ins Corp*, 228 Mich App 84, 87; 578 NW2d 326 (1998). However, as explained in *Barclay v Crown Bldg & Dev, Inc*, 241 Mich App 639; 617 NW2d 373 (2000), "[m]anifest injustice is *not* a third form of good cause that excuses a failure to comply with the court rules where there is a meritorious defense. Rather, it is the result that would occur if a default were not set aside where a party has satisfied the 'good cause' and 'meritorious defense' requirements of the court rule." *Id.* at 653 (emphasis in original). While a showing of good cause is not excused if a meritorious defense is shown, "the strength of the defense obviously will affect the 'good cause' showing that is necessary. In other words, if a party states a meritorious defense that would be absolute if proven, a lesser showing of 'good cause' will be required than if the defense were weaker, in order to prevent manifest injustice." *Alken-Ziegler, supra* at 233-234 (footnote omitted). "The question whether a default or a default judgment should be set aside is within the sound discretion of the trial court and will not be reversed on appeal absent

a clear abuse of that discretion.” *Park v American Casualty Ins Co*, 219 Mich App 62, 66; 555 NW2d 720 (1996).

Defendant’s motion was brought within a reasonable time, MCR 2.603(D)(3); MCR 2.612(C)(2), having been filed within two months after entry of the judgment. *Heugel v Heugel*, 237 Mich App 471, 482-483; 603 NW2d 121 (1999). Defendant established good cause for setting aside the judgment. He made a good faith attempt to answer the complaint in a timely manner and the judgment was entered only because the answer was technically defective. Although defendant’s assertion that he was not properly served with process did not constitute a meritorious defense, MCR 2.105(J); *Penny v ABA Pharmaceutical Co (On Remand)*, 203 Mich App 178, 181-182; 511 NW2d 896 (1993), defendant asserted another defense that would be absolute if proven. Plaintiff sought to hold defendant liable as a guarantor of the defendant’s corporation’s contractual obligations. Defendant stated in his affidavit that he never entered into any agreement with plaintiff; the contracts were signed by an agent who acted without authority. Defendant could not be held liable as a guarantor of the company’s obligations absent a written agreement signed by him that clearly and unambiguously reflected an intention to assume such responsibility. MCL 566.132(1)(b); *Bandit Indus, Inc v Hobbs Int’l, Inc (After Remand)*, 463 Mich 504, 514; 620 NW2d 531 (2001). Under the circumstances, the trial court did not clearly abuse its discretion in setting aside the default judgment as to defendant Vasan.

Affirmed.

/s/ Richard A. Bandstra

/s/ Joel P. Hoekstra

/s/ Stephen L. Borrello